

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

NICOLE A. ZELIN
Greenfield, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RENEE FILKINS.

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)

No. 30A05-0610-CR-583

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Richard D. Culver, Judge
Cause No. 30C01-0510-FC-221

April 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Renee Filkins appeals from her convictions for forgery, as a Class C felony, and Theft, as a Class D felony. Filkins raises a single issue for our review, namely, whether she received the effective assistance of trial counsel.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 21, 2005, Amy Friedrich-Seeman and her daughter dined at the King's Buffet restaurant in Greenfield. When the bill arrived, Amy removed a \$20.00 bill from her purse and placed it on the table with the bill. Amy then took her daughter back to the restaurant's buffet line, leaving her purse at their booth. Her purse contained several credit cards, a debit card, her driver's license, two cell phones, and an expense reimbursement check made payable to Amy from her employer in the approximate amount of \$600. When Amy and her daughter were finished with their meal, Amy noticed that her purse was no longer in the booth. Amy immediately alerted restaurant staff and the police. About two hours later Amy cancelled her credit cards, at which time she learned that a Visa card of hers had been used at Wood's Citgo Station at 600 West and U.S. 40 in Greenfield.

Detective John Jester of the Greenfield Police Department conducted the investigation into Amy's missing purse. Filkins' name arose as a person of interest, but when contacted at her home Filkins declined to speak to the Detective. However, on May 4, Terry Shireman, Filkins' fiancé, contacted Detective Jester about the case and, pursuant to Detective Jester's request, Shireman escorted Filkins to Detective Jester's

office. There, Detective Jester informed Filkins that she was free to leave at any time, and the Detective recorded the conversation by handwritten notes.

In the course of their conversation, Filkins informed Detective Jester that she took Amy's purse from the King's Buffet restaurant on April 21, 2005. Specifically, Filkins stated:

she watched a female get up from the table [and] walk to the serving line, [then Filkins] got up[,] took the purse, [exited] the store[,] went through the purse, took a couple items out of the purse[,] and then [threw] the purse into a wooded area [that] is located just east of the King's Buffet restaurant.

Transcript at 81. Filkins further stated that she used Amy's two credit cards, and that one of the places she used a card at was the Wood's Citgo station at 600 West and U.S. 40. Filkins also removed Amy's reimbursement check and driver's license from Amy's purse and destroyed them.

Following Filkins' interview with Detective Jester, the Detective told Filkins she was free to leave as long as she checked herself into the Dove House Recovery Center ("Dove House") in Indianapolis to complete drug treatment, and as long as Filkins stayed in touch with him. Filkins checked herself into Dove House that same day, and remained there for three months. At the time she checked in, Filkins appeared to be under the influence of drugs. And shortly thereafter, Filkins tested positive for THC and "benzo," a tranquilizer. Id. at 119. In October of 2005, after Detective Jester had not heard from Filkins, the Detective sent the case to the prosecutor. The prosecutor filed the charges against Filkins for forgery, as a Class C felony, and Theft, as a Class D felony.

On June 6, 2006, before the jury trial began, Filkins' trial counsel filed a motion to suppress her statements made to Detective Jester on May 5, 2005. In support, Filkins'

trial counsel stated that she “was not of a state of mind to make a statement” and that “[t]he statements were not of a voluntary nature.” Appellant’s App. at 19. On June 20, 2006, the day of the trial, the court held a hearing on the motion to suppress outside the presence of the jury. After Filkins’ trial counsel had presented evidence, the court denied the motion to suppress.

During the trial, Filkins’ counsel also presented evidence that Filkins was under the influence of drugs at the time she spoke with Detective Jester and that she was not cognizant of her admissions to the crimes. Specifically, Filkins’ counsel called Shurie Brown, the Director of Dove House, as a witness. Brown testified that Filkins appeared to be under the influence of drugs at the time she checked into Dove House. Filkins’ counsel also called Barbara Jones, the Manager of Dove House. Jones also testified that Filkins appeared to be under the influence of drugs when she checked herself into Dove House. Finally, Filkins’ counsel called Shireman, who testified that Filkins “was shooting up drugs [] daily and . . . was using oxycottin [sic].” Transcript at 128.

Further, Filkins’ trial counsel had Filkins Dove House’s records admitted into evidence. In those records, Filkins is described as a “past or present IV drug user.” Appellant’s App. at 30. Filkins’ counsel also had the Affidavit for Probable Cause admitted into the record, in which Detective Jester stated that Filkins told him she took Amy’s purse “because she was addicted to pills and needed some.” Id. at 10. And in his closing argument to the jury, Filkins’ counsel attempted to negate the mens rea elements of the charged crimes as follows:

There’s been no evidence of any kind that this woman had any such intention and in fact on that day that the conversation was made . . . it might

have been proven that she was incoherent. [“]Knowingly[”] . . . is to find as follows: The person engages in conduct knowingly if when he engages in this conduct he is aware of a high probability that he is doing so. Did she knowingly do some credit card transaction on the very day [] of this alleged [] theft[?] [H]ow could she . . . knowingly [] and intentionally [] intend to deprive this woman back here of her purse[?] There’s no proof of that. [R]eceipt of drug addiction at that time simply did not permit her to know [] really what she was doing. The two witnesses from Dove House said she had no comprehension and [] was [] very unacceptable [sic¹] to them. [V]oluntary intoxication comes into play when you consider whether she knowingly could have committed a crime.

Transcript at 149. The jury found Filkins guilty on both charges, and the trial court sentenced her to a total of four years imprisonment, with one year suspended. This appeal ensued.

DISCUSSION AND DECISION

Filkins sole contention on appeal is that she was denied the effective assistance of trial counsel. A defendant claiming ineffective assistance of trial counsel must satisfy two components. Clancy v. State, 829 N.E.2d 203, 212 (Ind. Ct. App. 2005), trans. denied. “First, the defendant must show deficient performance: representation that fell below an objective standard of reasonableness, committing errors so serious that the defendant did not have the ‘counsel’ guaranteed by the Sixth Amendment.” Id. (quoting McCary v. State, 761 N.E.2d 389, 392 (Ind.2002) (citing Strickland v. Washington, 466 U.S. 668 (1984))). Second, the defendant must show prejudice: a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. Id. Further, we afford great deference to counsel’s discretion to choose strategy and tactics,

¹ This statement seems to refer to the testimony of Brown and Jones that, when she checked herself into the Dove House, Filkins was “scattered,” “shaky,” and unable to fill out her own application. See Transcript at 123-24.

and strongly presume that counsel provided adequate assistance and exercised reasonable professional judgment in all significant decisions. Id.

Filkins challenges the following decisions of her trial counsel: (1) admitting the Affidavit for Probable Cause into the record; (2) calling Brown and Jones as witnesses; (3) calling Shireman as a witness. But, again, we afford great deference to the trial counsel's choice of strategy. Id. Those decisions of Filkins' trial counsel were all part of his reasonable trial strategy to negate the elements of knowledge and intent in the crimes charged. Specifically, each of the three witnesses stated that Filkins had a drug problem, and the Affidavit for Probable Cause stated that Filkins stole Amy's purse to get pills. Whether that evidence outweighed any possible negative inference that the jury might infer towards Filkins as a drug user was a professional judgment to be made by Filkins' trial counsel. And the same is to be said of any evidence of "prior bad acts,"² Appellant's Brief at 6, that may have accompanied the strategy of Filkins' counsel. On these facts, we cannot say that Filkins' trial counsel rendered ineffective assistance in attempting to negate the elements of knowledge or intent in the crimes of theft and forgery.

Affirmed.

RILEY, J., and BARNES, J., concur.

² Filkins asserts that the Affidavit for Probable Cause associates her with other thefts, and that Shireman likewise testified to other such acts. But, again, whether the overall weight of the Affidavit benefited his strategy was the trial counsel's decision. And regarding Shireman's testimony, Filkins' citation to the record discloses no such testimony.